CERTIFICATE

Supreme Court of the United States

OCTOBER TERM, 1928

No. 635 27

JOSEPH H. BROMLEY

vs.

BLAKELY D. McCAUGHN, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF PENNSYLVANIA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

FILED JANUARY 19, 1929

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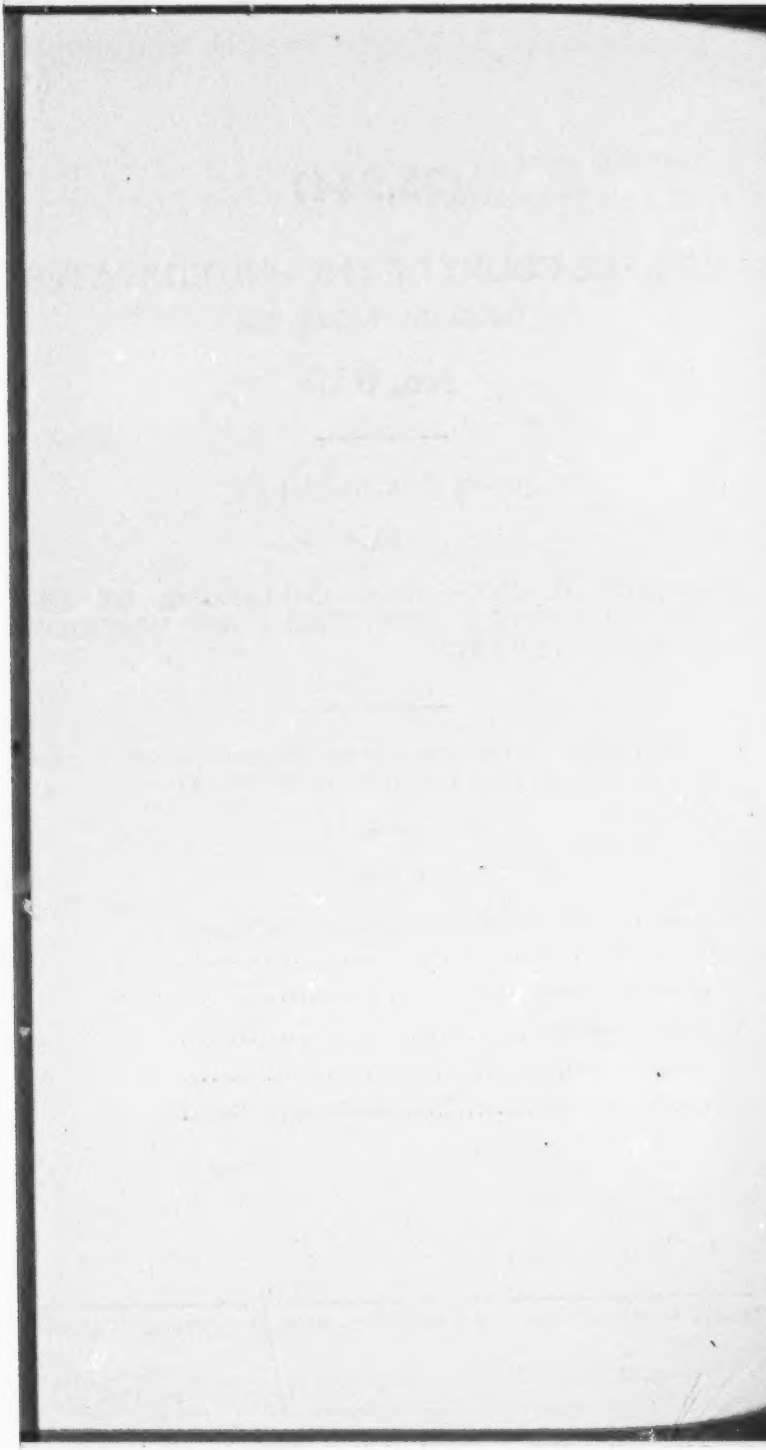

[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, OCTOBER TERM, 1928

No. 3927

JOSEPH H. BROMLEY, Plaintiff Below, Appellant,

vs.

BLAKELY D. MCCAUGHN, Collector of Internal Revenue for the First District of Pennsylvania, Defendant Below, Appellee

On Appeal from the District Court of the United States for the Eastern District of Pennsylvania

Before Buffington and Woolley, Circuit Judges, and McVicar, District Judge

Certificate to Supreme Court

STATEMENT OF FACTS

The Circuit Court of Appeals for the Third Circuit, desiring that the Supreme Court should guide it to a proper decision of this case, certifies (under authority of Section 239 of the Judicial Code) two questions of law of general importance which arise from the following facts:

In March, 1926, Joseph H. Bromley, then and theretofore a resident of the United States, filed with Blakeley D. McCaughn, Collector of Internal Revenue for the First District of Pensylvania, a return of his income for tax purposes which disclosed gifts he had made during the calendar year 1925 amounting to a net total of $568,300, on which, under protest, he paid a tax of $20,598 assessed pursuant to the provisions of the Revenue Act of 1924 as amended by the [fol. 2] Revenue Act of 1926. After the Commissioner of Internal Revenue had denied his claim for refund of the tax so paid, Bromley brought this action in the District Court of the United tSates for the Eastern District of Pennsylvania against the Collector for the amount of the gift tax and interest.

Specifically, the action is one to recover a tax upon transfers by gift, levied and collected under the provisions of Sections 319-324, inclusive, of the Revenue Act of 1924, approved June 2, 1924 (43 Stat. 253, 313), as amended by Section 324 of the Revenue Act of 1926, approved February 26, 1926 (44 Stat. 9, 86). The pertinent provisions, as amended, read as follows:

"(a) Section 319. For the calendar year 1924 and the calendar year 1925, a tax equal to the sum of the following is hereby imposed upon the transfer by a resident by gift during such calendar year of any property wherever situated, whether made directly or indirectly, * * *

(b) Sub-division (a) of this section shall take effect as of June 2, 1924."

The cause was presented to the trial court in the nature of a case stated, showing that the transfers by gift were all inter vivos, fully consummated after the enactment of the Revenue Act first cited and not made in contemplation of death, and containing a stipulation that judgment should be entered for the plaintiff or defendant according as the applicable provisions of the taxing act should be found invalid or valid.

The learned district court, being influenced in its judgment by decisions of the Supreme Court, particularly by those in Hylton vs. United States, 3 U. S. 171; Pollock vs. Farmers' Loan and Trust Company, 157 U. S. 429, 158 U. S. 601; Blodgett vs. Holden, 275 U. S. 142 and Untermyer vs. Anderson, 276 U. S. 440, as they bear directly or indirectly on the issues involved, held that the provisions of the Revenue Act under which the gift tax here in question was assessed and collected are not unconstitutional and accordingly entered judgment for the defendant. The plaintiff appealed.

Questions Certified

The questions of law growing out of the aforegoing facts upon which the Circuit Court of Appeals desires the instruction of the Supreme Court art these:

[fol. 3] 1. Are the provisions of Sections 319-324 of the Revenue Act of 1924, as amended by Section 324 of the Revenue Act of 1926, when applied to transfers of property by gift inter vivos, made after the effective dates of the cited

Revenue Acts and not made in contemplation of death, invalid, because they violate (a) the third clause of Section 2 and (b) the fourth clause of Section 9 of Article 1 of the Constitution in that the tax they impose is a direct tax and has not been apportioned?

2. Are the cited provisions, when applied to transfers of property made in like circumstances, invalid because they violate (a) the Fifth Amendment to the Constitution and (b) the first clause of Section 8 of Article 1 of the Constitution in that they impose a tax which is graduated and subject to exemptions and therefore lacks uniformity, and also deprive a person of his property without due process of law?

Joseph Buffington, Circuit Judge. Victor B. Woolley, Circuit Judge. Nelson McVicar, District Judge.

Dated January 2, 1929.

[fol. 4] Clerk's certificate to foregoing transcript omitted in printing.

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